

November 7, 2005

Dear Colleague:

As the debate over reforming Medicaid warms, I thought it might help to have a little more information about a contentious provision in the Deficit Reduction Act of 2005. As you know, Medicaid rules currently encourage “elder-law” attorneys to invent ways for upper-income clients to pretend to be poor, and thus qualify for the welfare benefits contained in Medicaid.

The Energy and Commerce Committee dealt this issue in our recent markup, and below is a transcript of one particularly illuminating exchange I had with Congressman Nathan Deal and counsel:

**House Energy and Commerce Committee
October 28, 2005**

U.S. Rep. Nathan Deal, R-Georgia: “I’ve quite frankly enjoyed this debate for a change. I’ve enjoyed seeing the Democrats defend breaks for millionaires or, in this case, half-millionaires.

“We’re dealing with asset transfers here that the governors have told us are the biggest loophole in the Medicaid business. Let me tell you what the most common scenario is. What happens is the attorney will tell somebody before they go in a nursing home, ‘Get rid of your assets so that you’re down to the \$2,000 level. Maybe go buy a bigger house so the equity therein is excluded. Or buy some nice pictures to put on the wall because furnishings will also be excluded. Then you can let the average taxpayer of this country pay the \$40,000-\$50,000 a year cost of keeping you in a nursing home.”

“Now, another assumption is that equity is there when they go to a nursing home, and the equity is going to be there when they get out. Wrong. You know why the percentage of recovery is so little? Because in the meantime they have the right to do whatever they want to do with that half-million dollars and it will not disqualify them from the Medicaid eligibility. They can spend it, they can do whatever they want with it, and the taxpayer has been ripped off.

“If we’re serious about doing something about the problems in Medicaid, this is a place we ought to start. I dare say that if you tell the average taxpayer in this country that they are having to pay for the nursing home cost for a person who has a half-million dollar equity, the taxpayer would say there’s something wrong with that.

“The governors have said there’s something wrong with that, and we’re trying to close the loophole. If I think we don’t deal with this, we’re going to continue to let the bar manipulate individuals so that they become Medicaid eligible and the taxpayers will continue to pick up the tab. And the largest single portion of the Medicaid cost is paying for long-term care.

Rep. John Shimkus, R-Illinois: “I’ve got a question for the Counsel. Under current law, what is the value of a home that we reach a bar by which we say that’s too expensive a house and you have to do something with it?”

Committee Counsel: “Current law says no limit.”

Rep. Shimkus: “So if a person has a million-dollar home, they can keep that home and go on Medicaid long-term care?”

Counsel: “Yes sir, they could.”

Rep. Shimkus: “Five million dollars?”

Counsel: “Still eligible for Medicaid.”

Rep. Shimkus: “Ten million?”

Counsel: “No problem, still eligible for Medicaid.”

Rep. Shimkus: “Forty million?”

Counsel: “Yes, sir.”

Rep. Deal: “Let me give you some comparisons, if we want to talk about what the rest of the world does on these issues. Let me give you three countries much more socialistic than we are. In England, you can have an asset of \$28,100 in the value of your home. In New Zealand, you can have the combined value of \$150,000 for all property and savings. In Ireland you can own a home providing it’s not worth more than \$133,000. I think \$500,000 is a very reasonable threshold and I support the Chairman’s amendment in this regard.”

Some forget that Medicaid is a taxpayer-supported welfare program for the poor, not an earned benefit like Medicare or Social Security. As you can see, the asset transfer rule contained in the reconciliation package is more than fair, it is generous.

Yours respectfully,

John M. Shimkus